

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #10	CCRB Case #: 201410604	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/12/2014 12:33 AM	Location of Incident: 145th Street and St. Nicholas Avenue subway station (TB DT03 command)	Precinct: 26	18 Mo. SOL 4/12/2016	EO SOL 4/12/2016	
Date/Time CV Reported Wed, 10/15/2014 4:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/15/2014 4:54 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Carlos Fermin	17927	911936	TB DT03		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Linhong Li	31771	952993	TB DT03		
2. SGT Philip Chau	4366	941539	TB DT03		
Officer(s)	Allegation			Investigator Recommendation	
A.POM Carlos Fermin	Force: PO Carlos Fermin used physical force against § 87(2)(b)				

Case Summary

On October 12, 2014, at approximately 12: 20 am, PO Linhong Li arrested § 87(2)(b) for smoking a cigarette on the mezzanine of the 125th street subway station in Manhattan. § 87(2)(b) admitted that he finished drinking a pitcher of beer approximately twenty minutes before his arrest, but stated that the alcohol had not affected his senses. As a transit recidivist, § 87(2)(b) was arrested for § 87(2)(a) 160.50, § 87(2)(b) and taken to the Transit District 3 stationhouse. Upon lodging him in a cell, PO Li requested § 87(2)(b) to remove and surrender his belt and shoe laces. § 87(2)(b) refused to do so. PO Li then requested the assistance of PO Carlos Fermin, who was on duty and present at the stationhouse. PO Fermin and PO Li went to the cell, at which time PO Fermin instructed § 87(2)(b) to remove his belt and shoe laces. § 87(2)(b) again refused to do so, and retreated to the rear right corner of the cell, with his arms raised and fists closed. PO Fermin approached § 87(2)(b) and stated: "...it doesn't have to be like this, these are the rules of the house, you don't want to be handcuffed to the railings looking like Jesus Christ." When PO Fermin stood approximately two to three feet away from § 87(2)(b) § 87(2)(b) attempted to punch PO Fermin. PO Fermin blocked the punch and then directed one punch at § 87(2)(b) making contact with his head or face (**Allegation A**). PO Fermin grabbed § 87(2)(b) and pushed him against the wall. § 87(2)(b) fell down to the bench, and then slid onto the floor, his back making contact with the floor. § 87(2)(b) was taken to § 87(2)(b), where he was diagnosed with a fractured jaw and a fractured nose. PO Fermin sustained an abrasion to his knuckles. § 87(2)(b) did not have a recollection of what transpired while he was in the stationhouse cell, and could not specify exactly why or when he lost his memory. § 87(2)(b) was charged § 87(2)(a) 160.50, § 87(2)(b). However, the charge was later dismissed (encl. C6-C13, CCRB complaint and verified statement; encl. D1-D9, PO Fermin's memo book, aided report, and CCRB testimony; E1-E11, PO Li's memo book, arrest report, witness statement, and CCRB testimony).

Mediation, Notice of Claim, and Criminal Histories

This case was not eligible for mediation because of § 87(2)(b)'s intention to file a lawsuit. § 87(2)(b) filed a Notice of Claim and a 50-H hearing was conducted (both dates are unknown; encl. C11-C15). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer's CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (encl. B2).
- PO Fermin has been a member of service for 21 years. He has been a subject in 6 previous CCRB cases, involving 10 allegations, all of which were closed as complainant unavailable, unsubstantiated, or exonerated. Five of these cases involved allegations of physical force (encl. B1) § 87(2)(g)

Potential Issues

- Although the stationhouse holding cell was equipped with surveillance cameras, video footage of the incident was not available.
- According to § 87(2)(b) PO Fermin, and PO Li, there were no witnesses to the incident as § 87(2)(b) was detained alone in a private holding cell, and no prisoners were lodged in the other cells at the time.
- An arrest photograph is not available because § 87(2)(b) was never photographed at the stationhouse (the incident occurred before a photograph could be taken).

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]

Explanation of Subject Officer Identification

In his CCRB statement, PO Fermin acknowledged being involved in a physical altercation with § 87(2)(b) during which he struck § 87(2)(b) with a punch (encl. D6-D9).
§ 87(2)(g) [REDACTED]

Recommendations

Allegation A: Force: PO Carlos Fermin used physical force against § 87(2)(b)

It is undisputed that PO Fermin used physical force against § 87(2)(b) § 87(2)(g) [REDACTED]

In his CCRB testimony, § 87(2)(b) stated that he could not recall what transpired immediately after he was lodged in cell 2 at the Transit District 3 stationhouse. § 87(2)(b) did not know why he was unable to remember what happened, or what he was doing immediately prior to losing consciousness. § 87(2)(b) only recalled regaining consciousness at § 87(2)(b) where he was told that he had had been involved in a physical altercation with an officer at the stationhouse (encl. C10).

In his CCRB testimony, PO Li stated that § 87(2)(b) had refused to surrender his belt and shoe laces after being lodged in the cell. According to PO Li, § 87(2)(b) stated “I’m not giving them to you – if you want them you have to take them from me.” (encl. E10-E11) After requesting PO Fermin’s assistance, the officers continued to ask § 87(2)(b) to surrender the items. At this

time, PO Li stated that § 87(2)(b) retreated to the rear right-side corner of the cell, in a fighting stance, with his fists closed and arms raised. PO Li stated that the officers began to approach § 87(2)(b) while repeatedly asking him to surrender the items, but that § 87(2)(b) was non-compliant, saying “if you want it from me, you have to take it from me.” (encl. E10-E11) PO Li stated that when PO Fermin was directly in front of § 87(2)(b) § 87(2)(b) tried to punch PO Fermin with a closed fist, but PO Fermin blocked the punch with his arm. PO Li stated that PO Fermin then punched § 87(2)(b) with his right fist, making contact with § 87(2)(b)'s face. PO Li could not recall which part of § 87(2)(b)'s face was struck. PO Li stated that § 87(2)(b) dropped to the ground after he was hit, but could not recall how he landed. A Line of Duty witness statement prepared by PO Li is consistent with his CCRB testimony (encl. E7-E11).

In his CCRB testimony, PO Fermin stated that PO Li requested his assistance in dealing with an uncooperative prisoner, § 87(2)(b). Upon entering the cell with PO Li, PO Fermin instructed § 87(2)(b) who was seated on the bench, to surrender his belt and shoe-laces. PO Fermin stated that § 87(2)(b) refused to do so, got up from the bench, and retreated to the rear of the cell. § 87(2)(b) balled his fists and adopted a fighting stance, and told the officers “if you want them you have to come get them.” (encl. D8) PO Fermin stated that when § 87(2)(b) shifted to the rear right corner of the cell, he approached § 87(2)(b) while asking him to comply. While PO Fermin stood in a bladed stance, approximately two to three feet away from § 87(2)(b) § 87(2)(b) suddenly attempted to punch PO Fermin. PO Fermin blocked § 87(2)(b)'s punch with his left arm, and then struck § 87(2)(b) with one punch, his right fist making contact with his head or face (encl. D9). § 87(2)(b) fell back against the wall from the impact of the punch. PO Fermin stated that he then grabbed § 87(2)(b) and pushed him back against the corner, to create distance, after which § 87(2)(b) “slumped” down onto the bench beneath him. § 87(2)(b) then slid off the bench and onto the ground, landing on his back. PO Fermin stated that § 87(2)(b)'s head “probably” made contact with the ground. PO Fermin did not recall if § 87(2)(b)'s head made contact with the wall or the bench before he hit the ground (encl. D8-D9). PO Fermin stated that he sustained an abrasion to his right hand as a result of the altercation. According to the aided report, PO Fermin received treatment at § 87(2)(b) for the injury (encl. D4). A line of duty report was also prepared. The report corroborates PO Fermin’s CCRB testimony, as well as the injury he received (encl. G1-G2). Furthermore, an Unusual Occurrence Report (UF-49) was prepared by Captain Juan Duran (H6-H7). The report corroborates PO Fermin’s testimony.

There were no civilian witnesses (encl. J3). Sgt. Chau, the desk sergeant at the time, did not observe the altercation in the holding cells, and his knowledge of the incident was limited. Sgt. Chau learned of the incident when an officer –he did not recall who – came to the front desk and told him that § 87(2)(b) had been “restrained” after refusing to take his shoe laces off. Sgt. Chau did not see or hear the incident in the cell, and did not recall § 87(2)(b)'s physical condition after the incident. Although he recalled reporting the incident to the Duty Captain and IAB, he did not recall who the involved officers were (encl. F6).

§ 87(2)(b)'s medical records from § 87(2)(g) document that he sustained fractures to the right side of his jaw and to his right nasal bone. § 87(2)(b) also sustained a linear laceration, 1 centimeter in length, to the right side of his nose. At § 87(2)(g), § 87(2)(b)'s wound was sutured, and he received a prescription for pain medication. § 87(2)(b) was referred to follow up with an oral surgery clinic, where he underwent treatment under anesthesia on § 87(2)(b). The medical records do not specify the nature of the treatment (encl. J2). The medical records indicate that § 87(2)(b) repeatedly denied any loss of consciousness to medical staff,

